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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT KALANI,

Plaintiff,

vs.

HAYWARD TOOLS & EQUIPMENT, INC.;
TONY L. Y. LIN; GRACE Y. C. LIN;

Defendants.

) No.
)
) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF,**
) **DECLARATORY RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff ROBERT KALANI ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Hayward Tools & Equipment
21732 Foothill Boulevard
Hayward, CA 94541
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against HAYWARD TOOLS & EQUIPMENT, INC.; TONY L. Y. LIN; and GRACE Y. C. LIN (hereinafter collectively referred to as "Defendants"), pursuant to the Americans with

1 Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

2 **II. JURISDICTION**

3 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
4 claims.

5 4. Supplemental jurisdiction for claims brought under parallel California law –
6 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

7 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

8 **III. VENUE**

9 6. All actions complained of herein take place within the jurisdiction of the United
10 States District Court, Northern District of California, and venue is invoked pursuant to 28
11 U.S.C. § 1391(b), (c).

12 **IV. PARTIES**

13 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
14 persons), firm, and/or corporation.

15 8. Plaintiff requires the use of a wheelchair when traveling about in public.
16 Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and
17 United States laws, and a member of the public whose rights are protected by these laws.

18 **V. FACTS**

19 9. The Facility is a public accommodation facility, open to the public, which is
20 intended for nonresidential use and whose operation affects commerce.

21 10. Plaintiff visited the Facility and encountered barriers (both physical and
22 intangible) that interfered with, if not outright denied, Plaintiff’s ability to use and enjoy the
23 goods, services, privileges and accommodations offered at the Facility. Plaintiff personally
24 encountered the following barriers at the Facility during Plaintiff’s visit to the Facility on or
25 about May 7, 2014:

- 26 a) Plaintiff was unable to locate a properly configured accessible parking
27 space at the Facility. He found two spaces that were poorly marked as
28 accessible, but they were improperly configured and excessively sloped.

1 Realizing that he would be unable to safely transfer from his vehicle to
2 his wheelchair within the designated accessible parking spaces provided
3 at the Facility, Plaintiff was forced to park in the parking lot of an
4 adjacent business and to travel a long distance to reach the entrance of
5 the Facility.

6 b) The ramp from the parking lot leading toward the entrance of the
7 Facility was an improperly configured built-up curb ramp, which was
8 narrow and excessively sloped. It was difficult for Plaintiff to maneuver
9 up and down the ramp, and he feared that his wheelchair would roll off
10 the sloped edges of the ramp.

11 c) Many of the aisles inside the Facility lacked necessary wheelchair
12 clearances, preventing Plaintiff from maneuvering down those aisles. He
13 wanted to look a particular tool but was unable to make his way down
14 the aisle to view it.

15 11. The barriers identified in paragraph 10 herein are only those that Plaintiff
16 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist
17 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once
18 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
19 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

20 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
21 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
22 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
23 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
24 once the barriers are removed.

25 13. Defendants knew, or should have known, that these elements and areas of the
26 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
27 the physically disabled. Moreover, Defendants have the financial resources to remove these
28 barriers from the Facility (without much difficulty or expense), and make the Facility

1 accessible to the physically disabled. To date, however, Defendants refuse to either remove
2 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

3 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
4 and authority to modify the Facility to remove impediments to wheelchair access and to
5 comply with the 2010 Standards for Accessible Design and the California Code of Regulations
6 Title 24. Defendants have not removed such impediments and have not modified the Facility to
7 conform to accessibility standards. Defendants have intentionally maintained the Facility in its
8 current condition and have intentionally refrained from altering the Facility so that it complies
9 with the accessibility standards.

10 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
11 so obvious as to establish Defendants' discriminatory intent. On information and belief,
12 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
13 to relevant building standards; disregard for the building plans and permits issued for the
14 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at
15 the Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
16 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
17 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
18 Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.

19 VI. FIRST CLAIM

20 Americans with Disabilities Act of 1990

21 Denial of "Full and Equal" Enjoyment and Use

22 16. Plaintiff incorporates the allegations contained in paragraphs 1 through 15 for
23 this claim.

24 17. Title III of the ADA holds as a "general rule" that no individual shall be
25 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
26 goods, services, facilities, privileges, and accommodations offered by any person who owns,
27 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

28 18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal

enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1992 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 16, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1992, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

31. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

32. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

VII. SECOND CLAIM

Unruh Act

33. Plaintiff incorporates the allegations contained in paragraphs 1 through 32 for this claim.

44. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

45. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Defendants violated the ADA for the purposes of Unruh Act damages.
3. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
4. Attorneys' fees, litigation expense, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: May 28, 2014

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore
Tanya E. Moore
Attorneys for Plaintiff
Robert Kalani

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, ROBERT KALANI, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: May 28, 2014

/s/ Robert Kalani

Robert Kalani

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for
Plaintiff, Robert Kalani